The obvious purpose of statutes would seem to be merely to confirm the change in the rule preventing alienability of choses in action. Upon this theory, several courts hold that the statutory provisions do not invalidate any agreement that the parties may have made in regard to assignment. In such jurisdictions the stipulation in case (3) would be upheld.[10] Some courts, however hold that all attempts to make money claims non-assignable are unavailing.[11] We venture to submit, however, that they are not led to this conclusion through any analogy drawn from the assignment of choses in possession as, for instance, the "horse" analogy in the principal case. The principal case, as already indicated, is of type (3). The analogy of the chose in possession applies only to the type case (2). If, therefore, the decisions which hold restrictions are not binding are to be supported, it would seem to be on special grounds of public policy which enter into the very birth, or creation, of this obligation as distinguished from case (2), which applies only to property already in existence.[12]

G. S., JR.

COPIES OF A PRINTED CRIMINAL LIBEL AS SEPARATE OFFENSES.

An interesting and difficult question is presented when copies of a newspaper containing a criminal libel are circulated in a jurisdiction other than that of the printing. This point was adjudi-

[10] *Barringer v. Bes Line Construction Co.* (1910) 23 Okl. 131; *Butler v. San Francisco Gas and Electric Co.* (1913) 16 Cal. App. Dec. 946. See an interesting note on this case by Professor O. K. McMurray in (1913) 1 CAL. L. REV. 471. The court held that a provision in the contract that it should not be assigned renders an assignment thereof void. Compare, however, s. c. on appeal, 168 Cal. 32, 41. See also *La Rue v. Groezinger* (1890) 84 Cal. 281.

[11] *Bewick Lumber Co. v. Hall* (1894) 94 Ga. 539 (Credit check marked "not-transferable," held to be assignable. Here a code provision regulated the matter). *Bank of United States v. Public Bank of New York City* (1915) 151 N. Y. S. 26. A comment in 24 YALE LAW JOURNAL 590-594 gives a somewhat detailed analysis of the problems in this case. The court held that a rule of the bank requiring the depositor to appear in person to withdraw his account was a reasonable one as regards the depositor; but that it would not justify the refusal of the bank to pay the assignee, for the reason that the bank is a debtor and "cannot make rules and regulations which will limit the right to assign the debt."

[12] The statutes have only added to the extent of the power that the creditor was given at common law. The power of assignment could be

cated in the recent cse of *State v. Moore*.[1] In this case an alleged libellous article appeared in a newspaper edited and printed in parish A, but circulated widely in parish B. The defendant, the proprietor of the paper, was indicted by the grand jury of parish B. The Supreme Court of Louisiana, Chief Justice Monroe dissenting, sustained a plea to the jurisdiction on the ground that if there was any offense committed it was in parish A.

The Louisiana constitution[2] guarantees that all criminal trials shall take place in the parish in which the offense was committed, and the revised statutes[3] provide that all crimes, offenses, and

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contracted away at common law, and whether or not the power given by the statutes can be contracted away, must rest upon a true interpretation of the statutes upon grounds of public policy. The arguments in favor of allowing a stipulation similar to the one in the principal case to prevail are briefly: (a) A money claim being an intangible *res* from its creation, the grounds are much weaker for invoking public policy to prevent the restriction of assignability. (b) Freedom of contract is of great importance to society. On the other hand, the reasons for a strict or narrow construction of the statutes are: (a) A money claim being "a courier without luggage," it is strongly urged that no impediment should be placed upon this power of assignment. Subsequent takers should not be put on notice of any secret agreements between assignor and debtor. (b) The law might vest the creditor with a naked power to assign in cases where the assignee had no notice, as in the case of an agent whose agency has been revoked; but the difficulty here arises that the statutes make all money claims either assignable or non-assignable. In the absence of specific language in the statutes invalidating stipulations similar to the one in the principal case, on principle, a money claim can be made non-assignable. Whether the courts will thus contrue the statutes is a matter which will be determined more or less by their views of public policy as above indicated.

The German Civil Code, sec. 399, provides that the power of assignment may be excluded by agreement.

[1] (1916) 72 So. (La.) 965.

[2] Art. 9: "All trials shall take place in the parish in which the offense was committed."

[3] Sec. 804: "Whoever shall maliciously defame any person by making, writing, publishing, or causing to be published, any manner of libel, shall on conviction thereof, suffer fine or imprisonment, or both, at the discretion of the court."

Sec. 976: "All crimes, offenses and misdemeanors shall be taken, intended and construed, according to and in conformity with the common law of England; and the forms of indictment, the method of trial the rules of evidence, and all other proceedings whatsoever in the prosecution of crimes, offenses and misdemeanors . . . shall be according to the common law unless otherwise provided."

misdemeanors shall be taken, intended, and construed, according to, and in conformity with, the common law of England.

It has been generally asserted by the text writers that a criminal prosecution for libel might be instituted in any jurisdiction in which the libellous article was published; that the situs of the offense was the situs of its publication; and that one who printed a libel in a newspaper, which circulated in another jurisdiction, was liable to indictment in either jurisdiction, or both.[4]

It being conceded that the situs of a criminal libel is the situs of its publication, it becomes necessary to understand what constitutes a publication. It is on this point that the court in the principal case departs from the generally accepted doctrine.

In both civil and criminal law the word "publish" is generally accorded the technical meaning of communicating defamatory matter to the mind of another.[5] A few courts, indeed, deem an irrevocable delivery sufficient in criminal cases.[6] Adopting the narrower definition, it follows that proof of the composition of the libellous matter and its mere existence in printed form does not constitute a publication; but that every communication or delivery of the matter to a third party by the principal, or his agent, is a publication, and so results in an additional offense.[7]

On the other hand, a very few courts have repudiated this generally accepted connotation of the word, and adopt the meaning ordinarily intended in referring to the "publishing" of a newspaper, magazine, or book.[8] It is this import that is attached to the word in the principal case. The court regards the printing of an edition of a newspaper as a single composite act and

[4] *State ex rel. Taubman v. Houston* (1905) 19 S. D. 644; *State v. Kountz* (1882) 12 Mo. App. 511; *Commonwealth v. Blanding* (1825) 3 Pick. (Mass.) 304; *Rex v. Watson* (1808) 1 Camp. 215; Odgers, *Libel and Slander* (5th ed., 1911) p. 469; Clark, *Criminal Law* (2d ed.) p. 421; Minor, *Conflict of Laws*, sec. 204.

[5] *Wilcox v. Moon* (1891) 63 Vt. 481; *Staub v. Van Benthuysen* (1884) 36 La. Ann. 467, 468; Odgers, *Libel and Slander*, p. 157, 162.

[6] *Lyle v. Clason* (1804) 1 Cai. (N. Y.) 581; *Rex v. Burdett* (1820) 4 B. & Ald. 95; Wharton, *Criminal Law*, sec. 1618.

[7] *R. v. Carlisle* (1819) 1 Chitty, 451, 453; Odgers, *Libel and Slander*, p. 469; see also *Underwood v. Smith* (1894) 93 Tenn. 687; *Cook v. Connors* (1915) 215 N. Y. 175.

[8] *United States v. Smith et al.* (1909) 173 Fed. 227; *State v. Bass* (1903) 97 Me. 484; *United States v. Press Publishing Co.* (1911) 219 U. S. 1. The last named case turned on a construction of the New York statutes, which were held to authorize only a single prosecution in any libel case.

the offense as completed upon the reading of a single copy, the remaining copies merely increasing its magnitude. From this, the court concludes that there has been an offense only in parish A, the jurisdiction of the printing.

It is indeed difficult to reconcile this decision with either principle or precedent. The fact that the offense of libel may have been completed in parish A would hardly seem to make it less of an offense to circulate the same edition, containing the alleged libellous matter, in parish B. It seems altogether unlikely that the constitutional guaranty provided for in Art. 9[9] was intended to change the rule of the common law which sanctioned a criminal prosecution for libel in any jurisdiction in which the libellous matter was communicated to a third party, irrespective of where it was written or printed.

The conclusion of the court was admittedly influenced by the fact that if a prosecution in parish B was permitted, it would lead to the anomalous situation of invoking a separate prosecution not only in each of the sixty-four parishes, but also for each sale of the paper. This result, however, does not necessarily follow; the arbitrary line of expediency might well have been drawn at the latter while still recognizing the former as both reasonable and logical. Furthermore, the greater number of decisions would seem to sustain the view that the sale of every separate copy is a fresh publication which is an indictable offense.[10] While the defendant's own physical act was completed when the papers were mailed, yet the machinery thus set in motion continued to act until they were received; and if the analogy of the law of homicide is followed, the crime must be held to have been committed where the act took effect.

S. F. D.

THE EFFECT, AS AGAINST THE ORIGINAL DEFENDANT AND HIS TRANSFEREES, TO BE GIVEN BY THE COURTS OF THE SITUS TO A FOREIGN DECREE ORDERING THE CONVEYANCE OF REALTY

The recent case of *Mallette v. Carpenter et al.*[1] raises again the interesting and heretofore unsettled question as to the effect

[9] *Supra.* The statutes of other states may well be found to abrogate the common law in this respect, in order to secure a greater freedom of the press. See *United States v. Press Publishing Co., supra.*

[10] See cases cited in note 4.

[1] (1916) 160 N. W. (Wis.) 182.